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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 817

DAVID ELMER HARTSHORN,
Appellant,

vs.

ROBERT X. KUZMIER AND RICHARD C. COTTER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK

STATEMENT AS TO JURISDICTION

DAVID E. HARTSHORN,
Counsel for Appellant.

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STATEMENT AS TO JURISDICTION

This appeal arises from an actual controversy seen in Civil Action #4800, Eastern District of New York and the amount of damages claimed in the civil action amounts to $50,000.00.

The subject matter of the appeal involves denial by the District Court of due process of law and denial of the protection of established laws based on the Constitution of the United States.

The appeal is taken from a final and complete decision dismissing the case in the District Court.

All of the objections to the procedure on which appeal are taken were given as objections in the court below.

All requirements of law are complied with by appellant and the bond required in the Permission for Appeal was filed as a cash bond in the lower court.

The appellant herein is a native born citizen of the United States and an honorably discharged veteran of the war of 1917-1918.

The judgment from which appeal was taken was signed on October 3, 1945, and the petition for permission to appeal was filed on or about November 13, 1945. Permission to appeal to the Supreme Court was signed on the 23rd of December.

The substantial error below was a fundamental denial of the protection of due process of law in holding that the plaintiff had to attend deposition in Manhattan, while the defendants, informally asking the deposition, purposely dodged or denied to the proposed witness, the protection of the safeguards provided by Federal Statutes and Rule of Court, particularly the protection of a subpoena.

The actual practice of law in the State of New York absolutely precludes justice to any veteran, whom a faithless wife wishes to lock up for reasons of greater freedom for herself and control of his property and obtaining of his pension rights (veterans and others). It is this fixed, regularly used, unconstitutional practice of the law in New York State relative to veterans, that makes this appeal necessary outside of the State of New York. The veteran appellant cannot get justice in New York because of a situation more particularly set out later.

This appeal is of necessity, made to the Supreme Court because the decision of the District Court in New York, physically and actually closes the prospect of rights against the defendants in New York State because of a threat (of record) made by the defendants in view of this case against them and in view of possible action against agents of the State in whose interests they have acted.

The action below was a claim for damages for malpractice of these defendants as lawyers blocking rights which

they were paid to secure. It would be against good conscience to let the defendants get away with acts of malpractice as more particularly set out below. But now the only hope is in this necessary appeal to the Supreme Court of the United States.

The plaintiff below, appellant here, is highly educated, and at the time trouble started had an absolutely clear record as a respected law abiding citizen, and as a highly rated professional member of society, standing well among the best persons in business and social life and had accumulated property.

This suit at law, in the Federal Court, was based on the malpractice of the defendants as members of the New York bar in mishandling a case for the plaintiff where they agreed to do specific acts and swore to the District Court in this suit that they had done the acts for the plaintiff, but this record shows they had not, and further they long blocked the plaintiff from acting successfully to insure his own safety, by misinforming him and his relatives and by destroying or permitting destruction of Court records and denying papers and records to the plaintiff which they boasted they had and knew he was entitled to and needed to carry out what they had undertaken to do and failed to do. They blocked his efforts to accomplish for himself or with other counsel what they in good *conscience* should have done themselves.

The veteran petitioner appellant was sent to Kings Park Veterans Memorial Hospital with *no* hearing in the first place on the *unfounded* complaint of a wife who wanted to avoid a well earned divorce and get control of his real estate, both in New York City and up-State, and get other valuable property including a pension of $100.00 a month which she boasted to get. She has since been divorced, although most of the evidence had been destroyed in the

years of delay with her in control of all of the veteran's affairs.

Now in Volume 16 Corpus Juris Secudum CJS, Par. 622, we see

> "The right to a fair and adequate hearing in which one has the right to defend his interests before an impartial court is essential to due process of law." *Bennett* v. *Wheatley,* 115 S. E. 83.

This case is an outgrowth of an established practice of abuse of sovereign authority in conduct of affairs of veterans in New York, including the consistent denial of due process of law in depriving veterans of their liberty and property without any trial or legal hearing, and raises other Federal questions involving the false imprisonment of veterans of the wars of these United States in "Veterans Memorial Hospital", a privately managed Contract Hospital for veterans. Into this the Federal Government lavishly pours money, according to the number of veterans there, to the no great good of any veteran and to the harm of a large number of them, as it appeared at the time. Any veteran, on petition or notice of any party, can be sent there originally or returned there with *no trial* or *no hearing* and *no opportunity* to be heard or to defend himself. His property similarly is taken and arbitrarily disposed of.

Facts of this situation have been laid before Governor Dewey by the help of Congressman Blackney.

It is established practice to send any veteran to this place for observation, with no trial, and then promptly place him, again without trial, under a committee to whom is accorded complete and absolute control over him and his property. Thereafter, all attempts to get justice are blocked in as many ways as possible, and all attempts of relatives to obtain justice are fought tooth and nail In

this case, the defendants' attorney cooperated with the opposition to nullify a Habeas Corpus action, to misinform friendly persons as to the real facts, to destroy court records, to deny help to carry out their agreements to get the plaintiff free of the situation, and to block other counsel from carrying out what they, the defendants herein, were under contract to perform.

The appeal is of more than average importance because of the much greater number of veterans who would now be liable, or exposed, to such regularly established miscarriage of justice in New York.

The technical grounds on which appeal is based are substantial since they involve the denial of the protection of due process of law to the plaintiff below, the appellant here. This included a number of discreet steps set out in the Petition for an appeal.

The statutes and decisions in the law give a number of grounds on which appeal is made or may be made to the Supreme Court of the United States.

Quoting from the 36th Volume of Corpus Juris Secundum (CJS) on the subject of Federal Courts, Par. 199:

> "The existence of ultimate discretional jurisdiction in the Supreme Court to review the cause gives it power —(in mandamus)—although the case is one in respect of which direct appellate jurisdiction is vested in an intermediate appellate court."
>
> Ex P United States Pa. 287 U. S. 241.

Par. 247 36th CJS Denial of Due Proces of Law:

> "A decision of a State Court involving a claim that petitioner has been denied due process of law in violation of the Federal Constitution may be reviewed by the U. S. Supreme Court. A claim that a State has in violation of the Federal Constitution *deprived* petitioner of life, liberty, or property, without due process

of law, or is *attempting* to do so, is sufficient to support review by the U. S. Supreme Court of a decision of a State Court. The controlling test in respect of the right of review is not in the form of the state law or its declared purpose, but is to be found in the *operation* and *effect* of the law as *applied* and *enforced* by the State.—" (italics mine)

This decision is in point, in view of actual practice in New York State. The present danger is that authorities of the State have been using the defendants in "attempting to do" what the New York courts have already been doing, namely the deprivation of the veteran herein of liberty and property without due legal process.

The denial of due process of law by the highest court of the State of New York is seen in the dismissal of an appeal taken by the appellant herein to that highest court. This dismissal is set out in an exhibit (G) in this record. The appeal to the highest court in the State of New York involved objections to denial of due process of law and to the destruction of the records of New York State courts. This dismissal was without an opinion and constitutes a denial of the right to the protection of the law of the country as guaranteed by the Federal Constitution.

This preceding quotation from 36 CJS, Par. 247 is additionally directly in point since the records show that the defendants are now engaged in "attempting" for the future to deprive appellant of liberty and property through their actions resulting in the destruction of records in this case so that a New York State agency can easily pick up the appellant herein so that he could again and finally be deprived of liberty and property again denying recourse to due processes of law and denying protection of due process of law.

The appeal is analogous to British practice, which allows

direct appeal to highest authority, such as the Privy Council, where justice is willfully blocked by *vis major*.

We see in 36 CJS Par. 201:

> "Proceeding in cases taken to the United States Supreme Court are governed by Acts of Congress, the Common Law, and ancient English Statutes."
> Camp versus Gress 250 U. S. Reporter, Page 318.

The decision in *Camp* v. *Gress*, 250 U. S. 318 shows historically three fundamental sources of our basic laws. All are of equal dignity and force. These three sources are the acts of Congress, the Common Law and the Ancient English Statutes. The latter two, the Common Law and the Ancient English Statutes, antedated the Constitution of the United States and were in force in the Colonies and are still basic law. They were historically of equal merit and dignity with the Constitution itself. The fundamental effect and force of the Common Law and the Ancient English Statutes will be set out more particularly in detail.

This provision of ancient safeguards in due process of law was a sweeping fundamental inclusion in the original concept of the laws of this government and not having been repealed in itself still stands as a fundamental safeguard to be called on and used in such a case as this where there is *otherwise no* protection against an abuse of sovereign authority by a sovereign state.

At the time of severance and independence of the American Colonies, appeal was allowed direct to the King or Privy Council or as sometimes known in the High Court of Delegates. This appeal was allowed either in England or the Colonies from a final decree of any court of justice however menial or wherever located in the realm. This appellate practice is still in force as it was in ancient times in England and the colonies. This court has come to be known in modern times as a Judicial Committee of the King in Privy Council.

This court was set up by the Act of 25 Henry 8th c. 19 as 4 and 5 (anno 1533) referred to in Vol. VI Par. 27 Edition of 1929 of the Laws of England by the Earl of Halsbury.

The decisions are uniformly in favor of an appeal to the Privy Council in any and every class of action.

Referring again to Halsbury Vol. IX Edition of 1909 Page 14 P. 13 Sub. Sec. 2:

> "The judicial committee of the Privy Council appears to be the only court in England which has jurisdiction in *every kind* of action as its appellate jurisdiction is not only coextensive as regards classes of action with that of the House of Lords—and it is the *ultimate* court of appeal from *all civil* courts from which appeal does not lie to the Supreme Court of Judicature or to the House of Lords." (italics mine)

This was and is the law of the appellate jurisdiction of the Ancient Court of Sovereign in Privy Council. Many cases have been found confirming this state of practice from which this present right of appeal stems by reservation in the United States. This is the only situation found wherein it seems to have been in view or advantageous to use the reservation of the rights to the Ancient Laws of England in our law and practice.

The first experience of the appellant herein with the Ancient English use of the Privy Council of England was when an engineering student in Montreal. In that P. C. case a poor widow, aggrieved by a decision in Probate, sent a letter to the Crown in Privy Council in England, with the aid of the rector of a Haymarket Square church. She obtained summary justice with the aid of the Privy Council. The practice was an exact parallel to that existing at the time

of severance of the British Colonies in North America and is the law now.

The general historical character of the appeals allowed to this final authority can be found from cases cited in Mews Digest of English Laws found in the Congressional Library. Vol. 16 Ed. 1926 pages 574 to 635.

> "Appeal allowed from sentence of Governor of Heligoland. Sentence passed without hearing case.
> *Siemens* v. *Bufe Moore*, P. C. 62.
>
> Appeal lies to Privy Council where error on face of record which could be basis of arrest of judgment in Court below.
> *Tronson* v. *Dent*, 8 Moore P. C. 420.
>
> Appeal lies to Crown even in cases where by statute the decision is final and unappealable.
> *Canadian Pac. Ry.* v. *Toronto City*, 81 L. J. P. C. 5.
>
> P. C. will interfere where a violation of natural principles of justice in its very foundations.
> *Arnold* v. *King Emperor*, 83 L. J. P. C. 299.
>
> Even where statute denied appeal Crown is advised to allow appeal since right to appeal was on face of record.
> *Falkland Islands* v. *R* (1 Moore P. C. (ns) 299).
>
> Even where appeal denied by statute from Supreme Ct. of Canada the P. C. will entertain an appeal where case of gravity involving matter of public interest or some important question of law, or affecting property of considerable amount or where the case is of some public importance or of a very substantial character.
> *Prince* v. *Gagnon*, 8 Appeals Cases 103."

The present appeal is on all points directly in line with this last high court decision.

1. The situation where veterans' affairs are regularly denied due process of law in New York State is of real

"gravity involving matter of public interest" and "important questions of law."

2. Property of considerable value has been involved all along and prospects show the conditions can be much worse.

3. The case is of great "public importance."

4. It is of a "very substantial character."

> "The court allowed appeal direct without intermediate appeal or attempt at writ of error In Re Barnett (4 Moore P. C. 453).
>
> Where there are questions of law raised in inferior Courts in the colonies, the Jud. Com. of the P. C. will favor an application for leave to appeal direct to the Queen in Council under 7 & 8 Vict c 69 without resorting to intermediate appeal.
>
> *Harrison* v. *Scott*, 5 Moore P. C. 357.
>
> The Judicial Committee will pass on a question of high judicial doubt.
>
> *James* v. *Australian Commonwealth*, 105 L. J. P. C. 57."

The trend of the cases is to maintain the right of appeal to highest authority as in the days of the American colonies where there is denial of fundamental justice, or even after appeals are exhausted, where there is;

1. A case of gravity involving public interest—as is the situation in this appeal or

2. Or some important question of law is raised, or

3. Property of considerable amount is involved if only in aggregate of possible cases.

In the case on appeal, the rights of the protection of the due process of law that were denied to the appellant herein

were not rights discretionary with the court or with the defendant but included positively in the law as being fundamental to the safety of parties to litigation.

This present appeal is clearly a proper appeal to highest authority since it is an appeal from a situation in New York where the actual practice is to deprive a veteran of liberty and property with no right to be heard in defense or to have any due process of law or due protection of law. When at great expense this step is tried the denial involves destruction of all court records.

The Ancient English laws reserved in the founding of our Constitution had and have a remedy, namely, the direct appeal to a highest court, which remedy is now sought in this appeal.

The case could safely be tried in the Newark District Court.

The defendants are not themselves acting with clean hands in this case and could have no reasonable objection to having the case transferred to the District Court in Newark on orders of the Supreme Court, since it is on the New York City rapid transit subway system, and just as accessible as Brooklyn. There, in contrast to the situation in New York City, they could *not* have the veteran plaintiff summarily picked up and expeditiously returned to the Veterans Memorial Hospital on any notion or reason they might give, as is regularly done under the actual practice of the law by authorities in New York.

To try the case in New Jersey would make it safe for the plaintiff, and give one possible avenue to the end of obtaining justice. The transfer to Newark would be much less of a change than many transfers regularly taking place in any state, even in the adjoining state of Connecticut, to expedite justice or for convenience of the Court.

Such a transfer, while doing no harm or inconvenience to the defendants, might provide the only possible way to arrive at justice. Ethically, the defendants have forfeited all right to object to a transfer because of the high-handed manner in which they have acted all along.

This appeal is believed to be properly taken.

Respectfully submitted,

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